

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE: §
§
PHILIP SERVICES CORPORATION, *et al.*, § Jointly Administered Under
§ CASE NO. 03-37718-H2-11
Debtor. §

SETTLEMENT AGREEMENT

WHEREAS, on June 2, 2003, Philip Services Corporation and its affiliated debtors, as debtors and debtors-in-possession (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101, *et seq.*, as amended (the "Bankruptcy Code"), which cases have been jointly administered under Case No. 03-37718-H2-11;

WHEREAS, on or about December 1, 2003, the United States, on behalf of the Environmental Protection Agency (the "EPA"), filed a consolidated Proof of Claim against certain Debtors;

WHEREAS, the Proof of Claim asserts claims, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 *et seq.*, for unreimbursed environmental response costs incurred and paid or to be incurred and paid in the future by the United States with respect to certain Sites as set forth therein, as well as a claim for a stipulated penalty in connection with a Consent Agreement and Final Order entered into in EPA Docket No. RCRA-10-2001-0188, pursuant to Section 3008(a) and (g) of the Resource Conservation and Recovery Act, ("RCRA"), 42 U.S.C. § 6928 (a) and (g), (collectively the "EPA Claims");

WHEREAS, the EPA Claims were asserted as general unsecured claims, except to the extent of any secured/trust interest in insurance proceeds received by Debtors on account of environmental liability to the United States;

WHEREAS, the Debtors do not admit any liability arising out of the transactions or occurrences alleged in the Proof of Claim;

WHEREAS, the parties hereto, without admission of liability by any party, desire to settle, compromise and resolve the EPA Claims;

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration receipt of which is hereby acknowledged;

IT IS HEREBY STIPULATED and agreed to by and between the parties hereto, subject to approval by the Bankruptcy Court, as follows:

1. Definitions In this Settlement Agreement, the following terms shall have the following meanings:

A. "Allowed Claim Site" shall mean each of the sites listed in Paragraph 2 of this Settlement Agreement.

B. "Bankruptcy Court" shall mean the United States Bankruptcy Court for the Southern District of Texas, Houston Division.

C. "Breslube-Penn Site" shall mean the Breslube-Penn Superfund Site, located at 84 Montour Road, Coraopolis, Pennsylvania, and all areas to which hazardous substances, pollutants, and contaminants released from the parcel have migrated.

D. "Casmalia Site" shall mean the Casmalia Superfund Site, comprising approximately 252 acres in Santa Barbara, California, and all areas to which hazardous

substances, pollutants, and contaminants released from the parcel have migrated.

E. "CERCLA" refers to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601, et seq.

F. "Consolidated Iron Site" shall mean the Consolidated Iron & Metal Superfund Site located in Newburgh, New York. The Site consists of a parcel of property located at the Foot of Washington Street in Newburgh, owned by Consolidated Iron & Metal Co., Inc., and formerly operated by, among others, Consolidated Iron & Metal Co., Inc., and all areas to which hazardous substances, pollutants, and contaminants released from the parcel have migrated.

G. "Debtors" shall mean Philip Services Corporation and its affiliated debtors, which filed voluntary petitions for relief under Chapter 11 of the "Bankruptcy Code on June 2, 2003, as debtors or reorganized debtors.

H. "EPA" shall mean the United States Environmental Protection Agency or any legal successor thereto.

I. "EPA Claims" shall mean the claims asserted in a consolidated Proof of Claim filed on behalf of EPA against certain Debtors on or about December 1, 2003, pursuant to CERCLA for unreimbursed environmental response costs incurred or to be incurred in the future by the United States with respect to certain sites as set forth therein, as well as a claim for a stipulated penalty in connection with the Georgetown Facility CAFO.

J. "Effective Date" shall mean the date on which this Settlement Agreement is approved by the Bankruptcy Court.

K. "Georgetown Facility CAFO" shall mean the Consent Agreement and Final Order entered into in EPA Docket No. RCRA-10-2001-0188, pursuant to Section 3008(a) and (g)

of the Resource Conservation and Recovery Act, ("RCRA"), 42 U.S.C. § 6928 (a) and (g), filed on January 17, 2002, relating to a facility located at 734 Lucille Street, Seattle, Washington.

L. "Malone Services Site" shall mean the Malone Services Company Superfund Site, comprising approximately 150 acres at 5300 Campbell Bayou Road in Texas City, Texas, and all areas to which hazardous substances, pollutants, and contaminants released from the parcel have migrated.

M. "Modena Yard Site" shall mean the Modena Yard Superfund Site, comprising approximately 20 acres on Creek Road in Chester County, Pennsylvania, and all areas to which hazardous substances, pollutants, and contaminants released from the parcel have migrated.

N. "Plan of Reorganization" or "Plan" shall mean the Debtors' Second Amended and Restated Joint Plan of Reorganization, confirmed by order dated December 10, 2003.

O. "Spectron Site" shall mean the Spectron Superfund Site, comprising approximately eight acres near Elkton, Maryland, and all areas to which hazardous substances, pollutants, and contaminants released from the parcel have migrated.

P. "United States" shall mean the United States of America, including EPA, and all of the United States' agencies, departments and instrumentalities.

2. The following EPA Claims shall be allowed in the amounts set forth below, and paid as Class 4 Allowed General Unsecured Claims without discrimination in accordance with the terms of the Plan of Reorganization, and the United States will be deemed to have withdrawn the EPA Claims for any amount in excess of these amounts:

<u>Allowed Claim Site (name and location)</u>	<u>EPA Region</u>	<u>Amount of Allowed General Unsecured Claim</u>
Consolidated Iron Site Newburgh, NY	2	\$2,851,930
Breslube-Penn Site Coraopolis, PA	3	\$12,483,273
Spectron Site Elkton, MD	3	\$597,529
Modena Yard Site Chester County, PA	3	\$135,858
Malone Services Site Texas City, TX	6	\$563,221
Casmalia Site Santa Barbara, CA	9	\$106,790

3. With respect to the Claim for Stipulated Penalties arising from the Georgetown Facility CAFO, the United States on behalf of EPA shall have an Allowed General Unsecured Claim of \$0. The United States reserves its rights with respect to the obligation of reorganized Debtors to comply with Georgetown Facility CAFO under Paragraph 11 of the Settlement Agreement and Consent Decree between EPA, the Washington State Department of Ecology, and Debtors, approved by the Bankruptcy Court on December 22, 2003.

4. Payment on the EPA Claims shall be made by Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice lockbox bank, referencing Case No. 03-37718-H2-11 and DOJ File Number 90-11-3-06852/1, in accordance with instructions provided by the United States to the Debtors after execution of this Settlement Agreement. Any EFTs received at the U.S. D.O.J. lockbox bank after 11:00 A.M. (Eastern Time) will be credited on the next business day. The Debtors shall transmit written confirmation of such payments to the

Department of Justice and to EPA at the following addresses:

Environmental Enforcement Division
Environment & Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044
Ref. DOJ File No. 90-11-3-07769/1

Theodore Kim
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W. - Mail Code 2272A
Washington, D.C. 20460

5. Distributions received by EPA will either be: (a) deposited in site-specific special accounts within the EPA Hazardous Substance Superfund or to be retained and used to conduct or finance response actions at or in connection with particular Allowed Claim Sites for which such accounts have been created, or to be transferred by EPA to the EPA Hazardous Substance Superfund; or (b) be deposited into the EPA Hazardous Substance Superfund.

6. Only the amount of cash received by EPA from the Debtors under this Settlement Agreement for EPA's allowed Unsecured Claim for an Allowed Claim Site, and not the total amount of the allowed claim for the Allowed Claim Site, shall be credited by EPA to its account for the Site, which credit shall reduce the liability of non-settling potentially responsible parties to EPA for the Site by the amount of the credit.

7. To the extent that at any time after the Petition Date, the Debtors recover insurance proceeds on account of any of the Allowed Claim Sites in excess of the Debtors' costs of pursuing such insurance proceeds, the Debtors may retain 50% of such excess insurance proceeds on account of the Allowed Claim Sites and the Debtors shall pay 50% of such excess insurance

proceeds on account of the Allowed Claim Sites to the United States. In the event that the relevant insurance policy covers claims, matters or sites in addition to one or more of the Allowed Claim Sites, the Debtors agree to allocate in writing any excess insurance proceeds on a fair and equitable basis among claims, matters or sites (whether or not an Allowed Claim Site) based upon all of the facts and circumstances, including but not limited to any defenses asserted by insurers, and with deference to any allocation by a court or in an approved settlement document. In determining the Debtors' cost of pursuing insurance proceeds for Allowed Claim Sites, the Debtors shall use the same percentage allocation of costs as is used in the Debtors' allocation of recovery of excess insurance proceeds attributed to Allowed Claim Sites. To the extent that excess insurance proceeds are allocable to sites other than the Allowed Claim Sites, no payment need be made to the United States from the excess insurance proceeds allocable to sites other than Allowed Claim Sites. The United States reserves the right to petition the Court for an adjustment of Debtors' allocation based upon all of the facts and circumstances. The payments required to be made under this subparagraph shall be in addition to the payments required to be made under Paragraph 2. However, under no circumstances, may the payments required to be made under this Paragraph, when combined with the consideration received for the Allowed Claim Sites under Paragraph 2, exceed the amount of the Allowed General Unsecured Claims for the Allowed Claim Sites under Paragraph 2 of this Settlement Agreement. In the event that the excess insurance proceeds sharing requirements of this subparagraph would otherwise result in such an exceedance, the Debtors shall retain the additional amount of excess insurance proceeds necessary to avoid such an exceedance. With respect to any payments received by the United States under this subparagraph, the United States shall credit accounts for

particular Allowed Claim Sites only in accordance with Debtors' allocation for the particular Allowed Claim Site (unless adjusted by the Court), which credit shall reduce the liability of non-settling potentially responsible parties for the particular Allowed Claim Site by the amount of the credit.

8. In consideration of the payments or distributions that will be made by the Debtors under the terms of this Settlement Agreement, and except as provided in Paragraph 9, the United States on behalf of EPA covenants not to bring a civil action or take administrative action against the Debtors pursuant to Sections 106 and 107 of CERCLA relating to the Allowed Claim Sites, or for recovery of a stipulated penalty with respect to Paragraph 19.a.(iii) of the Georgetown Facility CAFO as alleged in Paragraph 7 of the Proof of Claim. This covenant not to sue is conditioned upon the complete and satisfactory performance by the Debtors of their obligations under Paragraphs 2, 4, 7 and 15 of this Settlement Agreement. This covenant not to sue extends only to the Debtors and does not extend to any other person.

9. The covenant not to sue set forth in the previous Paragraph does not pertain to any matters other than those expressly specified in the previous Paragraph. The United States on behalf of EPA reserves, and this Settlement Agreement is without prejudice to, all rights against the Debtors with respect to all other matters, and specifically with respect to:

- (i) claims based on a failure by Debtors to meet a requirement of this Settlement Agreement;
- (ii) liability based upon the Debtors' ownership or operation of any Allowed Claim Site after the Effective Date, or upon the Debtors' transportation, treatment, storage, or disposal, or the arrangement for the transportation,

treatment, storage, or disposal of waste material at or in connection with any Allowed Claim Site, after the Effective Date;

- (iii) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- (iv) criminal liability; and
- (v) claims for any site other than the Allowed Claim Sites or for recovery of a stipulated penalty with respect to Paragraph 19.a.(iii) of the Georgetown Facility CAFO as alleged in Paragraph 7 of the Proof of Claim.

Without limiting any discharge, release, or injunction afforded as a result of orders or actions of the Bankruptcy Court, the covenants not to sue and exceptions thereto above shall also apply to Debtors' successors, assigns, employees, officers, and directors but only to the extent that the alleged liability of such successor, assign, employee, officer, or director is based upon its respective status as a successor, assign, employee, officer, or director, and not to the extent that the alleged liability arose independently of the alleged liability of Debtors. Nothing in this paragraph abrogates or diminishes any discharge of the Debtors in connection with the Plan of Reorganization.

10. With regard to claims for contribution against the Debtors for matters addressed in this Settlement Agreement, the Debtors are entitled to such protection from contribution actions or claims as is provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2). Nothing in this Settlement Agreement shall be construed to affect the allowance of claims pursuant to the Agreed Order Resolving Objection To Claim No. 3377 By Debtors, entered into between Debtors and certain claimants collectively referred to as the Malone Claimants, approved by the

Court on January 6, 2004.

11. The Debtors covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Allowed Claim Sites, including but not limited to: any direct or indirect claim for reimbursement from the Hazardous Substance Superfund, any claims for contribution against the United States, its departments, agencies or instrumentalities, and any claims arising out of response activities at the Allowed Claim Sites. Nothing in this Settlement Agreement shall be construed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611 or 40 C.F.R. § 300.700(d).

12. Except as provided in Paragraph 7, Debtors agree not to assert any claims or causes of action that they may have for all matters relating to any Allowed Claim Site, including for contribution, against any other person. This waiver shall not apply with respect to any defense, claim, or cause of action that Debtors may have against any person if such person asserts a claim or cause of action relating to the Site against Debtors.

13. Except as provided in Paragraph 12, nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Settlement Agreement, and may not be enforced by any such person.

14. Nothing in this Settlement Agreement modifies or nullifies the effect of Paragraph 4 (c), (e), and (f) of the Order Confirming the Plan of Reorganization entered on December 10, 2003.

15. Debtors' entry into this Settlement Agreement will be subject to Bankruptcy Court approval pursuant to Bankruptcy Rule 9019. Debtors agree to exercise their best efforts to obtain the approval of the Bankruptcy Court. This Settlement Agreement will also be lodged and

submitted for public comment following notice of the Settlement Agreement in the Federal Register. The United States reserves the right to withdraw or withhold its consent if the public comments regarding the Settlement Agreement disclose facts or considerations which indicate that the Settlement Agreement is inappropriate, or improper, or inadequate.

16. If this Settlement Agreement is not authorized and approved by the Bankruptcy Court, this Settlement Agreement shall be of no force and effect, whereupon nothing herein shall be deemed an admission of any fact or waiver of any right of either party with respect to the matters contained herein.

17. This Settlement Agreement represents the complete agreement of the parties hereto on the matters referred to herein and supersedes all prior agreements, understandings, promises and representations made by the parties hereto concerning the subject matter hereof. This Settlement Agreement may not be amended, modified or supplemented, in whole or in part, without the prior written consent of the parties hereto and the approval of the Bankruptcy Court.

18. The Bankruptcy Court has jurisdiction over the subject matter of this action and personal jurisdiction over the Parties. The Bankruptcy Court shall retain jurisdiction over the subject matter of this Settlement Agreement and over the Parties hereto for the duration of the performance of the terms and provisions of this Settlement Agreement for the purpose of enabling any of the Parties to apply to the Bankruptcy Court for such further order, direction, and relief as may be necessary or appropriate for the construction or interpretation of this Settlement Agreement or to effectuate or enforce compliance with its terms.

THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT

FOR THE UNITED STATES OF AMERICA

Date: 5.20.04

By: THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

Date: _____

By: ALAN TENENBAUM
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

Date: _____

By: _____

THOMAS V. SKINNER
Acting Assistant Administrator for
Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Date: _____

By: _____

THEODORE J. KIM
Attorney-Advisor
Office of Enforcement and Compliance
Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

FOR THE DEBTORS
PHILIP SERVICES CORPORATION, ET AL.

Date: 05-06-04

By: _____

MICHAEL RAMIREZ
Senior Vice President and
Chief Financial Officer
Philip Services Corporation